

**IN THE COURT OF SH. RAJINDER KUMAR
S.C./RC(WEST), TIS HAZARI COURTS, DELHI**

CS No.12710/16

In the matter of:

Sh. Charanjeet Singh,
S/o Late Sh. Balwant Singh,
R/o 16/325-B, Street No.11,
Faiz Road, Karol Bagh,
New Delhi-110005.

Through his attorney Ms. Jaswinder Kaur,
W/o Sh. Harmeet Singh Sethi &
D/o Sh. Charanjeet Singh,
C-44, III Floor, Shivaji Park,
Punjabi Bagh (West), Delhi.

..... Plaintiff

vs.

1. Rajesh,
S/o Sh. Mange Ram,
2. Smt. Laxmi @ Nisha Rani,
W/o Sh. Rajesh.

Both R/o E-154A, Nihal Vihar,
Nangloi, Delhi-110041.

3. Sh. Mahinder Pal Chauhan,
S/o Late Sh. Ram Swaroop Chauhan,
R/o 8793, Shidipura,
New Delhi.

..... Defendants

Date of institution of the suit	:	29.09.2006
Date of reserving order	:	10.06.2020
Date of pronouncement	:	20.06.2020

JUDGMENT

1. This is a suit for recovery of damages/use and occupation charges



filed by the plaintiff against the defendants.

2. Brief facts of the case as per the plaintiff are that he is a senior citizen and owner of the suit property. That the plaintiff has been staying in the property from the year 1947 and the property was allotted to his mother late Harbans Kaur. That the defendant no. 1 and 2 stayed unauthorized in a room of the property from 01.04.2005. That the plaintiff has obtained possession of the said room from the defendants on 25/26.09.2007. That in the year 1983, one Sunil Kumar Madan was inducted as a tenant in the portion of two rooms and the defendant no.1 was his servant. That Both the defendants requested the plaintiff to handover the possession of one room in March 2005. That the plaintiff allowed them to stay in one room till 31.03.2005 but they refused to vacate the possession after 31.03.2005. That the defendant no.1 and 2 turned into unauthorized occupation from 01.04.2005 and are liable to vacate the premises and further to pay Rs.500/- per day to the plaintiff.

3. In the WS filed by the defendant no.1 and 2, certain P.O's are taken like that the plaintiff is neither the owner of the suit property nor has any locus standi to file the case. It is also pleaded that the plaintiff has not come with clean hands and suppressed the material facts. That the defendant no.1 was inducted as a tenant by late Indu Ahlwalia @ Inderjeet Kaur @ Rs.300/- p.m and that no rent receipt was issued to him.

In the WS filed by the defendant no.3 certain P.O's are taken like that the plaintiff has no locus standi to file the case, suit is without cause of action and also that the plaintiff has not come with clean hands and suppressed the material facts. It is also pleaded that the defendant no.3 is the sole owner of the property in question having purchased the same from Usman Ghani vide



Sale Deed duly registered 25.01.2007 and mutated in records of DDA. It is also pleaded that the property was let out by late Asgari Begam to the mother of the plaintiff. That after the death of mother of the plaintiff, his sister Indu Ahlawalia @ Inderjeet Kaur was inducted as a tenant @ Rs.60/- per month and after her death, the plaintiff was acknowledged as tenant @ Rs.200/- per month. That late Asgari Begam during her lifetime had executed registered Will dated 24.08.1994 in favour of her nephew Usman Ghani. That the plaintiff did not pay the rent to Usman Ghani w.e.f. 01.09.1994 and also served a legal notice dated 27.01.2005 upon the plaintiff and also filed Eviction Petition u/s 14 (1)(a) & (e) DRC Act. That the possession of the room in question was given by the defendant no.1 to the defendant no.3 on 24.09.2007 but the police registered a false case FIR No.402/07 u/s 448/420/506 IPC against him and on 27.09.2007, the plaintiff broke open three locks of defendant no.3 unlawfully. That a legal notice was issued to the plaintiff dated 11.02.2008 but it was neither replied nor complied with by the plaintiff.

4. No replication was filed by the plaintiff to the written statement of the defendants.

5. On the basis of pleadings, following issues were framed on 23.02.2008:-

1. *Whether the plaintiff is neither the owner of the suit property and has no locus standi to file the present suit as alleged in PO No.1? OPD*
2. *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction as alleged in PO No.6 & 7? OPD*
3. *Whether the plaintiff is entitled to the relief of damages as*

prayed for? OPP
4. *Relief.*

6. It is pertinent to mention here that during the course of trial, the possession of the suit property was handed over by the defendant no.1 to the plaintiff and vide order dated 23.02.2008, the relief qua the possession of the suit premises was abandoned since became infructuous.

It is also pertinent to mention here that initially, there were two defendants in this case but vide order dated 03.12.2015, the defendant no.3 was added in this case while allowing an application u/o 1 (10) CPC filed by him.

7. The daughters of the plaintiff namely, Ms. Harvinder Kaur and Ms. Jaswinder Kaur were examined as (PW-1) and (PW-7) respectively. The plaintiff also got examined SI Mahesh Kumar (PW-2), Sh. Mukesh Kumar (PW-3), Sh. Chandra Bhan (PW-4), Sh. Nagendra Sah (PW-5) and Sh. Sunil Kumar Madan(PW-6) in support of his case. PE was closed on 27.03.18.

8. The defendants got examined Sh. Chander Bhan (DW-1), Sh. Ramesh Chand (DW-2), Sh. Parveen Kumar Rana (DW-3), Sh. Himanshu (DW-4), Sh. Mukesh Kumar (DW-5 & DW-10), Sh. Dipender Gahlaut (DW-6), Sh. Daulat Ram Kashyap (DW-7) and Sh. Rajesh Gupta (DW-8). Defendant no.3 got examined himself as DW-9 in this case. Defendant no.3 closed DE on 13.08.2019. DE was closed by the defendant no.1 and 2 on 15.10.2019.

9. Now, issue-wise findings are as under:-

9.1. **ISSUE NO.2:-** *Whether the suit has not been properly valued for the purpose of court fee and jurisdiction as alleged in PO No.6*

& ?? OPD

9.2 The onus to prove this issue was put upon the defendant. The defendant no.1 and 2 have pleaded that the value of the suit property was more than Rs.3 lacs, hence, the court was not having any pecuniary jurisdiction to try the same. The defendant no.3 also has pleaded that the suit was not valued properly for the purpose of court fee and jurisdiction. It is also pleaded that requisite court fee has not been paid on each relief separately by the plaintiff.

Initially, this was a suit for eviction besides damages of unauthorized occupation amounting to Rs.2.60 lacs. During the pendency of the case, possession of the suit property has been given by the defendant no.1 and 2 to the plaintiff and the relief qua the possession already stands abated on 23.02.2008. So far as the claim of Rs.2.60 lacs is concerned, the plaintiff has already paid the sufficient court fee of Rs.4,930/-.

Hence, the issue is decided against the defendants and in favour of the plaintiff.

10. ***Issue no.1 : Whether the plaintiff is neither the owner of the suit property and has no locus standi to file the present suit as alleged in PO No.1? OPD***

Issue no.3 : Whether the plaintiff is entitled to the relief of damages as prayed for? OPP

10.1 Both the issues are inter-connected, hence are taken up together. The onus to prove the issue no.1 was put upon the defendants and that of the issue no.3 was upon the plaintiff. It is the plea of the plaintiff that the suit property was allotted in the name of his mother. That the defendant no.1 and 2



stayed unauthorizedly in one of the room of the property since 01.04.2005 and possession was given to the plaintiff on 25.09.2007.

It is the plea of the defendants that the plaintiff is not the owner of the suit property and has no locus standi in this case. It is also the plea of the defendant no.1 and 2 that they are the tenants of Ms. Indu Ahluwalia @ Inderjeet Kaur @ Rs.300/- per month. It is also the plea taken by the defendant no.3 that he is the sole owner of the property having purchased the same from Sh. Usman Ghani vide a registered Sale-Deed dated 25.01.2007 and was let out to the mother of the plaintiff by Ms. Asgari Begum.

10.2. In their examination-in-chief, both the daughters of the plaintiff i.e. (PW-1) and PW-7 support the story of the plaintiff but while under cross-examination, it was deposed by Ms. Harvinder Kaur (PW-1) at page-1 that she might have filed the documents in respect of allotment of property to her grandmother.

10.3. Ms. Jaswinder Kaur (PW-7) during her cross-examination dated 17.07.2019, at page no.2 has deposed that they have filed documents issued by Ministry of Rehabilitation in favour of Ms. Harbans Kaur alongwith the application filed in DDA against mutation of Sh. Usman Ghani & Sh. M.P. Chauhan. During her subsequent cross-examination dated 31.07.2019 at page-2, it was admitted to be correct by her that the properties are mutated in the name of Smt. Asgari Begam in the records of DDA which exists prior to 1947. It was also deposed that after the year 1947, the property was not mutated in the name of any person in the record of DDA.

During her further cross-examination dated 13.08.2019 at page no.1, it was also deposed by Ms. Jaswinder Kaur (PW-7) that there was no Rent



Agreement executed between Sh. Sunil Madan and Smt. Indu Ahluwalia . It was also deposed that she do not know the rate of rent nor as to what was the last rent paid by Sh. Sunil Madan.

10.4. The plaintiff's side has not filed any Conveyance-Deed on record nor got her title documents (Ex. PW-1/B colly) proved in this case. There is no Rent Agreement nor any counter-fall of any rent receipt placed on record by the plaintiff to show that one Sh. Sunil Madan was their tenant. PW-7 is even not aware about the rate of rent nor about the last rent paid by Sh. Sunil Madan.

10.5 It is the plaintiff, who is supposed to prove his case by standing on his own legs on the scale of preponderance of probabilities. Even, the duplicate copy of certificate of Registration dated 24.10.1949 issued by Ministry of Rehabilitation, (Ex. PW-1/B colly) is not having mentioning of any property. In the absence thereof, nothing can be presumed in favour of the plaintiff.

10.6. As per the plaintiff, the defendant no.1 and 2 remained in unauthorized occupation of the suit property but as per the defendant no.1 and 2, they are the tenants under late Ms. Indu Ahluwalia @ Inderjeet Kaur @ Rs.300/- per month. So, if the contents of W/S of the defendant no.1 and 2 are presumed to be correct, Section 116 of Indian Evidence Act bars a tenant from disputing the title of the landlord of the property. The defendants did not dispute the relation of the plaintiff with late Ms. Indu Ahluwalia @ Inderjeet Kaur.

Accordingly, there is no need to deal with the issue no.1. The same is strike out.

10.7. So far as the issue no.3 is concerned, the plaintiff has demanded a

decree of Rs.2.60 lacs against the defendant no.1 and 2. No amendments were brought in the relief sought in this case after the addition of the defendant no.3 in this case nor any relief was claimed against the defendant no.3. The whole of the plaint is silent as to how the said sum of Rs.2.60 lacs is calculated by the plaintiff nor it is stated in the evidence affidavit of PW-1 and PW-7 for the reasons best known to them. The plaintiff has claimed the occupation charges @ Rs.500/- per day but did not place on record any documents nor any evidence to suggest as to what amount could be fetched by letting out the property in question.

In view of the above, issue no.3 is decided against the plaintiff and in favour of the defendants.

11. **RELIEF**

11.1 In view of the findings on the aforesaid issues, the plaintiff is not found entitled to any relief. Hence, the suit is dismissed.

12. No order as to cost.

13. Decree sheet be prepared accordingly

14. File be consigned to record room after due compliance.

**PRONOUNCED IN THE OPEN
COURT ON 20.06.2020**

**(RAJINDER KUMAR)
SC./RC(WEST)/ DELHI**